

EXHIBIT J

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FILED
 ORANGE COUNTY SUPERIOR COURT

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ALLIED APT. & EQUIPMENT CO. INC./CLERK

SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE
 CENTRAL JUSTICE CENTER

DIANE CESSNA,

Plaintiff,

vs.

LIBERTY MUTUAL INSURANCE
 COMPANY, a California
 corporation; and DOES 1 through
 100, inclusive,

Defendants.

CASE NO.

03CC01793

COMPLAINT FOR DAMAGES

1. BREACH OF THE IMPLIED
 COVENANT OF GOOD FAITH
 AND FAIR DEALING

DEMAND FOR JURY TRIAL

JUDGE DAVID H BRICKNER
 DEPT C17

COMES NOW, plaintiff DIANE CESSNA for cause of action
 against defendants LIBERTY MUTUAL INSURANCE COMPANY, a
 California corporation; and DOES 1 THROUGH 100, inclusive, and
 each of them, complains and alleges as follows:

GENERAL ALLEGATIONS

1. The true names and capacities, whether
 individual, plural, corporate, partnership, associate, or
 otherwise, of DOES 1 through 100, inclusive, are unknown to
 plaintiff who therefore sues said defendants by such fictitious

COMPLAINT FOR DAMAGES

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CESSNA
 LIBERTY MUTUAL

01 CIVIL FILING FEE \$21.00
 LSC 03061 01/21/2003 10:25 PAID CHK/CHK

THIS CASE HAS BEEN ASSIGNED TO CIVIL CASE MANAGEMENT. EACH
 FILING MUST INCLUDE THE ASSIGNED JUDGE AND DEPARTMENT
 DESIGNATION AS SHOWN UNDER THE CASE NUMBER. ALL PARTIES
 MUST COMPLY WITH THE ORANGE COUNTY SUPERIOR COURT RULES (COURT RULES 1.1-1.10)

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1 names. The full extent of the facts linking such fictitiously
2 sued defendants is unknown to plaintiff. Plaintiff is informed
3 and believes, and thereupon alleges that each of the defendants
4 designated herein as a DOE was, and is, negligently, or in some
5 other actionable manner, responsible for the events and
6 happenings hereinafter referred to, and thereby negligently, or
7 in some other actionable manner, legally and proximately caused
8 the hereinafter described injuries and damages to the plaintiff.
9 Plaintiff will hereafter seek leave of the Court to amend this
10 Complaint to show the defendants' true names and capacities
11 after the same have been ascertained.

12 2. Plaintiff is informed and believes, and thereupon
13 alleges that at all times mentioned herein, defendants, and each
14 of them, including DOES 1 through 100, inclusive, and each of
15 them, were agents, servants, employees, successors in interest,
16 and/or joint venturers of their co-defendants, and were, as
17 such, acting within the course, scope, and authority of said
18 agency, employment, and/or venture, and that each and every
19 defendant, as aforesaid, when acting as a principal, was
20 negligent in the selection and hiring of each and every other
21 defendant as an agent, servant, employee, successor in interest,
22 and/or joint venturer.

23 3. At all relevant times mentioned herein,
24 defendants, and each of them, when acting as a principal, was
25 negligent in selection, hiring, monitoring, supervision and
26 oversight of each and every other co-defendant as an agent,
27 servant or employee and, furthermore, expressly directed,
28 ///

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1 consented to, approved, affirmed, and ratified each and every
2 action taken by the co-defendants.
3

4 THE AUTOMOBILE INSURANCE CONTRACT

5 4. Sometime prior to October 2, 1999, in
6 consideration of the payment of the required premium, defendant
7 LIBERTY MUTUAL INSURANCE COMPANY issued its insurance policy #
8 A02-261-695933-018 (hereinafter "Policy") to the plaintiff DIANE
9 CESSNA.

10 5. Plaintiff is informed and believes, and thereupon
11 alleges that her Policy stated that the insurer, defendant
12 LIBERTY MUTUAL INSURANCE COMPANY, shall pay all sums that the
13 insured shall be legally entitled to recovery from the owner or
14 operator of an uninsured motor vehicle because of bodily injury
15 suffered by the insured and caused by the accident.

16 6. Plaintiff is informed and believes, and thereupon
17 alleges that at all times mentioned herein, plaintiff was
18 insured by defendant LIBERTY MUTUAL INSURANCE COMPANY with
19 uninsured motorist benefits with \$50,000 limits.

20 7. At all times herein mentioned, the Policy
21 referred to herein was executed and delivered in the county of
22 Orange, State of California.
23

24 THE THREE VEHICLE AUTOMOBILE ACCIDENT

25 8. Plaintiff is informed and believes, and thereupon
26 alleges that on or about October 2, 1999, while the Policy was
27 in full force and effect, plaintiff was involved in a high-
28 impact three vehicle automobile accident.

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1 9. Plaintiff is informed and believes, and thereupon
2 alleges that on or about October 2, 1999, she was driving a 1988
3 Honda Accord at or near the intersection of Garden Grove
4 Boulevard and Nelson in the City of Garden Grove, County of
5 Orange, State of California.

6 10. Plaintiff is informed and believes, and thereupon
7 alleges that while she was stopped for a red light, she was hit
8 from behind by JUAN MANUEL FRECIADO, an uninsured motorist. At
9 the time of the accident, JUAN MANUEL FRECIADO was traveling at
10 approximately 35 miles per hour.

11 11. Plaintiff is informed and believes, and thereupon
12 alleges that the force of the high-impact pushed her vehicle
13 forward striking a vehicle in front of her, subjecting the
14 plaintiff to a rear and frontal impact.

15 12. Plaintiff is informed and believes, and thereupon
16 alleges that as a result of the collision between her vehicle
17 and JUAN MANUEL FRECIADO'S Nissan Turbo, she sustained severe
18 physical and emotional injuries, including but not limited to,
19 neck, wrists, right shoulder, right elbow and left knee.

20 13. At the time of the October 2, 1999 three vehicle
21 accident, plaintiff was insured by defendant LIBERTY MUTUAL
22 INSURANCE COMPANY with uninsured motorist benefits with \$50,000
23 limits.

24
25 NOTICE TO DEFENDANT LIBERTY MUTUAL INSURANCE COMPANY

26 14. Plaintiff is informed and believes, and thereupon
27 alleges that within a reasonable time after the October 2, 1999
28 three vehicle accident, she notified the defendant LIBERTY

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1 MUTUAL INSURANCE COMPANY of the facts of the accident, that the
2 serious injuries suffered by the plaintiff were the result of
3 the negligence of the uninsured driver, and that the plaintiff
4 had incurred medical bills in excess \$ 10,000.00.

5 15. Plaintiff is informed and believes, and thereupon
6 alleges that at all times mentioned herein, she complied with
7 all conditions precedent to receive the benefits of the policy
8 and provided the defendant with proof of the nature and extent
9 of plaintiff's injuries and medical and hospital bills, witness
10 statements, police accident reports, photographs, and other
11 proof that the injuries suffered by plaintiff were directly and
12 proximately the result of the negligence of the uninsured
13 motorist and without any fault on the part of the plaintiff.

14 16. Plaintiff is informed and believes, and thereupon
15 alleges that at all times mentioned herein, plaintiff offered to
16 provide and did provide defendant with such medical
17 examinations, further statements, and such other documentation
18 as would be reasonably necessary to assist the defendant to make
19 the payment to plaintiff pursuant to the terms of the Policy.

20 17. Plaintiff is informed and believes, and thereupon
21 alleges that at all times mentioned herein, defendant LIBERTY
22 MUTUAL INSURANCE COMPANY failed and refused to pay the plaintiff
23 the amounts due under the provisions of the policy even though
24 it knew, or should have known, that plaintiff's damages were in
25 excess of her uninsured policy limits.

26 18. Plaintiff is informed and believes, and thereupon
27 alleges that at all times mentioned herein, defendants knew or
28 in the exercise of good faith reasonably should have known, that

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1 the injuries suffered by the plaintiff were solely the result of
 2 the negligence of the uninsured motorist.

3 19. Plaintiff is informed and believes, and thereupon
 4 alleges that at all times mentioned herein, defendant LIBERTY
 5 MUTUAL INSURANCE COMPANY denied and disputed the amount of
 6 damages plaintiff DIANE CESSNA was entitled to under her policy.

7
 8 FIRST CAUSE OF ACTION

9 (BY PLAINTIFF DIANE CESSNA FOR BREACH OF THE
 10 IMPLIED COVENANT OF GOOD FAITH AND FAIR
 11 DEALING AS AGAINST DEFENDANTS LIBERTY
 12 MUTUAL INSURANCE COMPANY AND DOES 1 THROUGH
 13 100, INCLUSIVE)

14 20. Plaintiff realleges and incorporates herein by
 15 reference each and every allegation and statement contained in
 16 paragraphs 1 through 19, inclusive, of the General Allegations,
 17 above.

18 21. Plaintiff is informed and believes, and thereupon
 19 alleges that the implied covenant of good faith and fair dealing
 20 requires an obligation that parties to a contract/agreement will
 21 not do anything that would impair the right(s) of a party to
 22 receive the benefits of the agreement.

23 22. Defendants, and each of them, breached their
 24 covenant of good faith and fair dealing by not acting in good
 25 faith to effectuate a fair, prompt and equitable settlement.
 26 Defendants acted in bad faith by:

27 (a) Failing to undertake an adequate and
 28 complete investigation of the facts surrounding the claim so

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1 that they contended plaintiff's injuries were not the result of
2 the negligence of the uninsured motorist, when if a timely and
3 complete investigation had, in fact, been undertaken, defendant
4 would have known that the uninsured motorist was solely
5 responsible for the injuries suffered by the plaintiff;

6 (b) Unreasonably withholding the benefits owned
7 to the plaintiff under the terms of her Policy;

8 (c) Unreasonably delaying payment of benefits
9 due to the policyholder, DIANE CESSNA;

10 (d) Failing to thoroughly investigate the
11 foundation for its denial of plaintiff's claim for benefits;

12 (e) The defendants, and each of them, knew that
13 the plaintiff had incurred substantial medical expenses as a
14 result of the collision and had been unable to attend her usual
15 occupation and was dependent upon the insurance proceeds to
16 support her family. Yet, they offered plaintiff the sum of
17 \$9,000.00, which was substantially less than the uninsured
18 limits of plaintiff's policy, although defendants knew that
19 plaintiff's damages exceeded the policy limits;

20 (f) That although the extent of plaintiff's
21 injuries and the liability of the uninsured motorist were well
22 known to the defendants, defendants unreasonably declined to pay
23 the policy benefits to plaintiff and forced the plaintiff to
24 demand arbitration of the claim and, only after the award of the
25 arbitrator, which was in the sum of \$72,772.00, far in excess of
26 the uninsured policy limits, did the defendant offer to pay the
27 proceeds of the policy.

28 ///

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1 (g) Withholding payment of benefits from
2 plaintiff that defendants knew were due and owing under its
3 Policy without a factual basis for doing so;

4 (h) Withholding payment of benefits from
5 plaintiff that defendants knew were due and owing without a
6 contractual basis for doing so;

7 (i) Withholding payment of benefits from
8 plaintiff that defendants knew were not only due and owing under
9 its Policy, but after defendants knew or had actual notice of
10 plaintiff's medical condition;

11 (j) Withholding payment of benefits that
12 defendants knew were due and owing under its Policy in order to
13 increase its income and profits and avoid incurring the cost of
14 necessary treatment; and

15 (k) Other acts of bad faith of which plaintiff is
16 presently unaware, but which will be shown at the time of trial.

17 23. As a direct and proximate result of defendants'
18 bad faith conduct in failing to investigate, negotiate, settle,
19 and pay the amounts to plaintiff, to which she was legally
20 entitled, plaintiff sustained economic and compensatory damages
21 for enforcing the Policy provisions, presenting a claim to
22 arbitration and loss of use of the funds and the added
23 litigation and attorney fee expenses, the exact amount of which
24 expenses will be stated according to proof, pursuant to
25 California Code of Civil Procedure Section 425.10.

26 24. As a further and direct result of the
27 aforementioned conduct of the defendants, and each of them,
28 plaintiff has suffered mental and emotional distress, including

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1 but not limited to, frustration, depression, nervousness and
2 anxiety and has thereby incurred general damages in a sum in
3 excess of the jurisdiction of this Court to be determined
4 according to proof at the time of trial.
5

6 PUNITIVE DAMAGES

7 25. As stated above, within a reasonable time after
8 the October 2, 1999 three vehicle automobile accident, plaintiff
9 contacted defendant LIBERTY MUTUAL INSURANCE COMPANY and
10 informed it of the facts surrounding the accident.

11 26. Sometime thereafter, plaintiff made a demand upon
12 the defendants, and each of them, to settle the uninsured
13 motorist case for the policy limits.

14 27. Plaintiff is informed and believes, and thereupon
15 alleges that at all times mentioned herein, defendants, and each
16 of them, continued to represent to the plaintiff that her claim
17 was being evaluated when in fact, defendants were not adequately
18 investigating the facts and circumstances surrounding her claim.

19 28. In order to expedite her claim, plaintiff provided
20 defendants, and each of them, with information documenting the
21 nature and extent of the injuries sustained by her as a result
22 of the October 2, 1999 automobile accident. In particular,
23 plaintiff provided defendants, and each of the, with photographs
24 of her damaged vehicle, deposition testimony, witness
25 statements, traffic collision report, responses to defendant's
26 discovery and substantial amount of medical records and medical
27 bills. Furthermore, plaintiff also appeared and was examined
28 during her independent medical examination.

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1 29. Plaintiff is informed and believes, and thereupon
2 alleges that at all times mentioned herein, plaintiff fully
3 cooperated with defendants and their counsel with regard to any
4 all requests for information.

5 30. After acquiring all of the above-mentioned
6 information regarding the manner in which the subject accident
7 occurred and the types of physical injuries suffered by the
8 plaintiff, defendants, and each of them, offered to settle
9 plaintiff's uninsured motorist claim for only \$9,000.00.

10 31. This offer was wholly unacceptable in light of the
11 significant injuries suffered by the plaintiff and the plaintiff
12 was left with no choice by to retain an attorney and demand
13 arbitration pursuant to policy and in accordance with Insurance
14 Code Section 11580.2.

15 32. Plaintiff is informed and believes, and thereupon
16 alleges that at all times mentioned herein, defendants, and each
17 of them, ignored evidence in their file which clearly supported
18 plaintiff's demand in an effort to focus on facts justifying
19 denial of the claim.

20 33. Plaintiff is informed and believes, and thereupon
21 alleges that at all times mentioned herein, defendants, and each
22 of them, knew that plaintiff's uninsured claim was worth more
23 than defendants' offer, yet they defrauded the plaintiff out of
24 benefits due and payable per her policy.

25 34. Plaintiff is informed and believes, and thereupon
26 alleges that at all times mentioned herein, defendants, and each
27 of them, attempted to defraud the plaintiff out of her benefits
28 that were due and payable by representing to her that her

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1 injuries were not severe and/or were not caused by the October.
2 2, 1999 three-vehicle accident even though they had in their
3 possession evidence that unequivocally showed that plaintiff's
4 injuries were severe and resulted from the accident.

5 35. Plaintiff is informed and believes, and thereupon
6 alleges that at all times mentioned herein, defendants, and each
7 of them, made the above-mentioned representations to the
8 plaintiff without thoroughly investigating the foundation of
9 their denial of plaintiff's claim for benefits.

10 36. Plaintiff is informed and believes, and thereupon
11 alleges that at all times mentioned herein, two years and five
12 months after the October 2, 1999 accident, an arbitration was
13 held before the Honorable James J. Alfano.

14 37. During the arbitration, plaintiff did not present
15 any new facts. The evidence presented by the plaintiff
16 consisted of the information that had been previously submitted
17 earlier to the defendant, LIBERTY MUTUAL INSURANCE COMPANY.

18 38. Plaintiff is informed and believes, and thereupon
19 alleges that at all times mentioned herein, the Honorable James
20 J. Alfano awarded plaintiff \$72,772.00 for all of her claims.
21 Furthermore, the Honorable James J. Alfano stated that his award
22 was based partly on the data contained in the plaintiff's
23 medical records.

24 39. The conduct of the defendants, as set forth above,
25 was intended by the defendants, and each of them, to cause
26 injury to plaintiff or was despicable conduct carried on by the
27 defendants with a willful and conscious disregard of the rights
28 of the plaintiff, subjected plaintiff to cruel and unjust

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1 hardship in conscious disregard of plaintiff's rights, and was
2 an intentional misrepresentation, deceit, or concealment of a
3 material fact known to the defendants with the intention to
4 deprive plaintiff of property, legal rights or to otherwise
5 cause injury, such as to constitute malice, oppression or fraud
6 under California Civil Code Section 3294, thereby entitling
7 plaintiff to punitive damages in an amount appropriate to punish
8 or set an example of defendants.

9 40. Defendants' conduct described herein was
10 undertaken by the corporate defendants' officers or managing
11 agents, identified herein as DOES 1 through 100, who were
12 responsible for benefit determinations, utilization review and
13 management, communications and/or decisions. The aforescribed
14 conduct of said managing agents and individuals was therefore
15 undertaken on behalf of the corporate defendants. Said
16 corporate defendants further had advance knowledge of the
17 actions and conduct of said individuals whose actions and
18 conduct were ratified, authorized, and approved by managing
19 agents whose precise identities are unknown to plaintiff at this
20 time and are therefore identified and designated herein as DOES
21 1 through 100, inclusive.

22
23 WHEREFORE, plaintiff prays for judgment against
24 defendants, and each of them, as follows:

- 25 1. For general damages in excess of the
26 jurisdictional limits of this Court;
27 2. For incidental and consequential damages according
28 to proof, as well as interest thereon;

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3. For exemplary and punitive damages against each defendant according to proof in an amount sufficient to deter such wrongful, fraudulent, malicious and intentional misconduct in the future on the part of defendants, and each of them, as well as other similarly situated;

4. For all costs of suit incurred herein;

5. For the reasonable attorney's fees incurred by plaintiff in prosecuting the underlying claim for benefits due and in prosecuting this action as a result of the wrongful conduct of the defendants, and each of them;

6. For prejudgment interest; and

7. For such other and further relief as the Court may deem just and proper.

DATED: January 16, 2003

AGNEW & BRUSAVICH
A Professional Corporation

By: Vibhu Talwar
BRUCE M. BRUSAVICH
VIBHU TALWAR
Attorneys for Plaintiff

DEMAND FOR JURY TRIAL

PLAINTIFF HEREBY DEMANDS A JURY TRIAL.

DATED: January 16, 2003

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